

## **201 KAR 11:121. Improper conduct.**

RELATES TO: KRS 324.010(3), 324.160, 24 C.F.R. 3500

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282 requires the Real Estate Commission to promulgate administrative regulations necessary to carry out and enforce the provisions of KRS Chapter 324. This administrative regulation establishes behavior considered improper conduct.

Section 1. Definition. "Guaranteed sales plan" means an offer or solicitation to guarantee the:

- (1) Sale of an owner's real estate; or
- (2) Purchase of the owner's real estate if the owner's real estate is not sold by the broker.

Section 2. (1) It shall constitute improper conduct for a licensed agent to:

(a) Accept or agree to accept, without written disclosure to the seller and buyer or lessor or lessee on the purchase or lease contract, a referral fee from any person in return for directing a client or customer to that person, or another, who provides or agrees to provide any goods, service, insurance or financing related to a transaction involving real estate. This provision shall not affect paying or receiving referral fees between licensed agents for brokerage services;

(b) Refuse or prohibit any prospective purchaser from viewing or inspecting real estate listed for sale or lease with the agent, or with the agent's company, without the written and signed direction of the owner. This provision shall not be construed to permit otherwise unlawful discrimination;

(c) Fail to satisfy one (1) or more of the following fiduciary duties owed to the licensee's client:

1. Loyalty;
2. Obedience to lawful instructions;
3. Disclosure;
4. Confidentiality;
5. Reasonable care and diligence; and
6. Accounting;

(d) Advertise a guaranteed sales plan without:

1. Disclosing whether:
  - a. A fee is charged for participation;
  - b. The real estate shall meet qualifications for participation;
  - c. The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party; and
  - d. The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; and
2. Including, in:
  - a. Print advertising, letters that shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;
  - b. Radio advertising, communication that shall be clearly understandable; or
  - c. Television advertising:
    - (i) Verbal communication that shall be clearly understandable;
    - (ii) Written communication that shall appear on the screen at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and in let-

ters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lower-case letters are used; or

(iii) Any combination of verbal and written communication that shall comply with the requirements of this clause; or

(e) Violate a provision of KRS Chapter 324 or 201 KAR Chapter 11 governing brokers, sales associates, or real estate transactions.

(2) It shall not be considered improper conduct for a licensed agent to advertise the fee or other compensation the licensed agent agrees to charge for his or her services. (17 Ky.R. 2295; Am. 2691; 3105; eff. 4-12-1991; 27 Ky.R. 1509; 2708; eff. 4-9-2001; 31 Ky.R. 1329; 1647; eff. 4-22-2005; 34 Ky.R. 829; 2277; eff. 5-2-2008; 36 Ky.R. 429; 1012; eff. 12-4-2009; 40 Ky.R. 2812; 41 Ky.R. 741; eff. 10-31-2014.)